

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on January 16, 2008

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
Robert E. Curry, Jr.
Cheryl A. Buley

CASE 07-E-0213 – Petition of Sheldon Energy LLC for an Original Certificate of Public Convenience and Necessity on Regulatory Regime Pursuant to Public Service Law Section 68.

ORDER GRANTING CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY,
AND PROVIDING FOR LIGHTENED REGULATION

(Issued and Effective January 17, 2008)

BY THE COMMISSION:

INTRODUCTION

By petition filed February 16, 2007 (and supplemented January 7, 2008), Sheldon Energy LLC (the Company) requested a Certificate of Public Convenience and Necessity (CPCN), pursuant to §68 of the Public Service Law (PSL), authorizing the construction and operation of a wind energy generating project proposed to be located in the Town of Sheldon, Wyoming County. The Company also requested a declaratory ruling providing for lightened regulation as an electric corporation.¹

On March 8, 2007, in connection with its request for a CPCN, the Company moved for an expedited proceeding, pursuant to 16 NYCRR §21.10(a)(1), so that the

¹ The petition was filed pursuant to 16 NYCRR Part 8, which relates to Declaratory Rulings; however, the request is that a decision be made granting relief, rather than simply declaring entitlement to such relief.

hearing required by PSL §68 might be held before us on the application and any information filed by the parties, without oral testimony. The Company caused a notice of its petition and motion to be published in the Arcade Herald, a newspaper of general circulation in the vicinity of the proposed project, on March 15, 2007, pursuant to 16 NYCRR §21.10(a)(3). Within the ten-day period specified in 16 NYCRR §21.10(b)(2), which expired on March 26, 2007, 19 responses to the motion were filed by individual citizens.

A notice of the petition for lightened regulation was published in the State Register on March 28, 2007 in conformance with §202(1) of the State Administrative Procedure Act (SAPA). No response to the notice was received within the SAPA §202(1)(a)(i) comment period, which expired on May 14, 2007.

THE PETITION

The Company is a Delaware limited liability company and a subsidiary of Invenergy Wind LLC (Invenergy). The petition states that Invenergy is a leading developer, owner and operator of large-scale wind energy generating facilities throughout North America and Europe. According to the Company, Invenergy subsidiaries have eight projects totaling 686 megawatts (MW) under development or in commercial operation in Poland, Montana and Texas. The Company intends to commence construction as soon as possible and anticipate that their projects will begin commercial operation near the end of 2008.

Description of Project

The project as originally submitted proposed the installation of 86 wind turbines. The Company intends to install General Electric 1.5 MW, SLE model turbines. During the course of the environmental review the Project was reduced to 75 turbines, for a rated project output of 112.5 MW. The project will consist of 75 wind turbines, 20 miles of access roads, aboveground and underground electrical collection lines, an interconnection substation, a construction staging area, and a centrally located operations

and maintenance facility. Project construction is anticipated to start in early 2008 and be completed by the end of the year.

The turbine array will be located in the Town of Sheldon. A substation will be located near the proposed point of interconnection with the existing New York State Electric & Gas Corporation (NYSEG) 230 kV Stolle Road – Meyer transmission line. Each wind turbine is a three-bladed, upwind, horizontal-axis with a rotor diameter of up to 271 feet. The nacelle is located at the top of each tower and contains the electrical generating equipment. The turbine rotor and the nacelle are mounted on top of a 262 feet tall tubular tower. Towers are approximately 13.6 feet in diameter at the base and approximately 8 feet in diameter at the top. The maximum height for the tower and turbine configuration is 388 feet 9 inches to 397 feet, measured when a rotor blade is at the top of its rotation. The lowest point of the blade will be 127 feet above ground. The wind turbines will be painted white or a pale color.

Stormwater and erosion control plans will minimize construction impacts. Following construction, disturbed areas will be restored to agricultural use in accordance with New York State Department of Agriculture and Markets (NYSA&M) Agricultural Protection Guidelines, or re-vegetated as appropriate to site conditions. Special construction and restoration measures within NYS-regulated wetlands will be specified in permits to be issued by the New York State Department of Environmental Conservation (DEC).

The Company has committed to comply with the requirements of our regulations regarding the protection of underground facilities (16 NYCRR Part 753); the Company also certified that it would become members of Dig Safely New York, and would require all contractors, excavators and operators associated with its facilities to comply with the underground facility protection regulations. The Company has also committed to comply with the requirements of our regulations regarding identification and numbering of above ground utility poles (16 NYCRR Part 217).

On January 7, 2008, the Company submitted a supplement to its petition, providing additional details and descriptions of their proposed electric facilities, including: features for facility security and public safety; a plan for quality assurance and

control; measures for facility design and construction; utility notification and coordination plans for work in close proximity to other utility transmission and distribution facilities; vegetation and facility maintenance standards and practices; emergency response plans for construction and operational phases; and complaint resolution measures. Facility design is proposed to conform to the National Electric Safety Code, as well as other relevant codes and standards applicable to facility siting, construction and operation. The substation was moved to increase offset from an existing major gas transmission pipeline, and details of pipeline facilities protection for project construction and operation have been coordinated with pipeline operators.

The Project will sell its output into the wholesale markets. Invenenergy intends to sell the Project output through bilateral contracts, and the spot markets administered by the New York Independent System Operator or adjacent control areas such as New England or Ontario. The project will sell renewable energy credits or environmental attributes to buyers such as the New York State Energy Research and Development Authority, green tag marketers and other buyers. In addition the project will offer capacity, voltage support and ancillary services to the NYISO markets.

Lightened Regulation

The Company requested that it be regulated under a lightened regulatory regime similar to the regimes that have been applied to other entities engaged in selling electric power exclusively at wholesale. According to the petition, the Company will sell the output of its project exclusively at wholesale and will not be a retail supplier of electricity.

COMMENTS

Comments opposing certification of the Sheldon facilities were timely filed by: Adam, Cynthia, Ken and Kristen Blair; Raymond L. Caryl; Michael P. and Nadja Laska; George and Peggy Metzger; Robert H. Murray; Michael Peresan; Roy H. Schneggenburger; Christopher G. and Denise Siracuse. Written comments regarding the proposed certification of the project were received in response to the petition and to the request for expedited consideration. Comments discussed general arguments in

opposition or raised issues that were addressed by the lead agency under the State Environmental Quality Review Act (SEQRA). The comments in opposition raise concerns about opportunities for public review; general environmental matters including project need, purported benefits, and consideration of alternatives, noise, visual and operational effects on residents, habitat and wildlife, property devaluation, and facility setback requirements.

DISCUSSION AND CONCLUSION

State Environmental Quality Review

Environmental review of the proposed facilities was conducted pursuant to SEQRA, Article 8 of the Environmental Conservation Law, with the Town of Sheldon acting as lead agency. The purpose of SEQRA and its implementing regulations (6 NYCRR Part 617 and 16 NYCRR Part 7) is to incorporate consideration of environmental factors into the existing planning, review and decision-making processes of state, regional and local government agencies at the earliest possible time. To accomplish this goal, SEQRA requires that agencies determine whether the actions they are requested to approve may have a significant impact on the environment. If it is determined that the action may have a significant adverse impact, an environmental impact statement must be prepared by the lead agency or the applicant.

The applicant submitted to the Town Board a Full Environmental Assessment Form (EAF). Based on its review of the Full EAF, the Sheldon Town Board served as Lead Agency, and determined that the High Sheldon Wind Farm Project could have a significant impact, and therefore, on January 17, 2006 issued a Positive Declaration of Environmental Significance, requiring the preparation of a Draft Environmental Impact Statement (DEIS).

The Town Board conducted scoping, including a public scoping session on March 14, 2006, to identify issues to be addressed in the DEIS, along with methodologies to be employed. A Final Scoping Document was issued by the Lead Agency on March 30, 2006. On June 20, 2006, the Town Board accepted a DEIS submitted by Sheldon Energy, issuing a Notice of Completion and starting a 60-day public comment period that

included a public hearing and the receipt of written comments. Notice of both the comment period and the public hearing was published in the Town's official newspaper. Notice was also mailed to each Involved Agency and published in the Environmental Notice Bulletin (ENB). The Town Board received numerous comments on the DEIS during the public hearing and in writing.²

A FEIS was prepared, and was accepted on January 16, 2007. A Notice of Completion was prepared and submitted to the ENB and the FEIS was circulated to Involved and Interested Agencies and to the public.

Under SEQRA, the Town Board, as Lead Agency, and each other involved agency, must adopt a formal set of written findings based on the FEIS. The SEQRA Findings Statement of each agency must:

- (i) consider the relevant environmental impacts, facts, and conclusions disclosed in the FEIS;
- (ii) weigh and balance relevant environmental impacts with relevant social, economic, and other considerations;
- (iii) provide the rationale for the agency's decision;
- (iv) certify that the requirements of 6 NYCRR Part 617 have been met; and
- (v) certify that, consistent with social, economic, and other essential considerations, and considering the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigation measures identified as practicable.

Once the findings are adopted, the SEQRA process is completed, and the lead agency and involved agencies can begin to approve, approve with conditions, or disapprove the proposed project. Each involved agency must make its own SEQRA findings.

² The Final Environmental Impact Statement (FEIS) contains copies of: a transcript of the public hearing, all legal notices, and all written comments.

The Town Board conducted the SEQRA review in parallel with its review of the applications submitted by Sheldon Energy. A table of requested approvals, including those needed from the Town was included with the FEIS as Appendix A.1. The Town Board has authority to approve, approve with conditions, or disapprove the applications.

The DEIS and FEIS for the project analyzed potential environmental impacts on land use and zoning, visual resources, socioeconomic issues, traffic and transportation, air quality, noise, soils, geology, terrestrial and aquatic ecology including threatened and endangered species, effects on communications facilities, stormwater management, and impacts of construction; they contained proposed general and specific mitigation measures. The Town determined that a large-scale wind power-generating project will result in significant economic benefits to the area. Moreover, the Town concluded, based upon field investigations and review of the DEIS and the FEIS, that the proposed action with the mitigation measures incorporated in the FEIS minimizes or avoids significant adverse environmental impact to the maximum extent practicable. The mitigation measures discussed in the FEIS include: compliance with conditions and any mitigation measures required by any federal, state, and local permits and approvals; implementation of appropriate mitigation measures defined in such permits or approvals; use of minimum setbacks from residences to limit noise, visual and public safety impacts; and employment of environmental monitors to assure compliance with all environmental commitments and permit requirements. Measures to mitigate soil compaction and mixing in agricultural fields have been identified. Project-wide soil erosion and sediment control will be addressed in the Stormwater Pollution Protection Plan.

Historic Preservation Review

The State Historic Preservation Office (SHPO) New York State Office of Parks, Recreation and Historic Preservation (OPRHP) reviewed the proposed project pursuant to §106 of the National Historic Preservation Act (NHPA). OPRHP determined that the project will have no adverse impact on archeological resources listed or eligible for listing on the State or National Registers of Historic Places. By letter of April 19, 2007, the SHPO stated that the project will have an adverse effect on historic resources as

listed in that letter. SHPO further found that an evaluation of mitigation to offset the project impacts to cultural properties should be undertaken in consultation with the appropriate state or federal agencies.

The requirements of Parks, Recreation and Historic Preservation Law §14.09 are supplanted where a full evaluation of potential cultural resource impacts is evaluated pursuant to NHPA §106. The US Army Corps of Engineers (ACOE) is evaluating project wetlands impacts, and has conducted a §106 cultural resources impact evaluation for a full 5-mile radius project visual Area of Potential Effect. Offset mitigation plans have been developed and will be implemented pursuant to a Memorandum of Understanding between the SHPO, the ACOE and the Company. Thus, our responsibilities for consultation with the SHPO and consideration of cultural resources impacts have been satisfied.

Bird and Bat Impacts

In addition to the historic resources impacts discussed above, impacts on avian and bat species are anticipated due to facility operations. The FEIS identifies potential mortality estimates based on analysis of site conditions and operating experience at other wind-powered electric generation projects. The FEIS indicates that post-construction mortality reporting and an adaptive management strategy to address any adverse impacts to birds and bats that are revealed by these studies should be developed with additional input from the DEC and the U.S. Fish and Wildlife Service. This approach is appropriate to the mitigation of adverse wildlife effects, provided that the adaptive management strategy is required to be implemented in facility operations. Critical migratory periods and hours of highest risk of impact may be identified through a period of monitoring operations and impacts. Deterrent mechanisms and habitat manipulation near turbine locations hold potential for reducing wildlife collisions with operating turbines; they warrant additional evaluation as greater operational experience in the industry is gained. Based on operational experience, impact avoidance or minimization strategies appropriate to the facility site should be developed and implemented as appropriate to address potential significant impacts on avian and bat

species. We will therefore require the Company to address the need for additional post-construction study, monitoring and analysis of impacts, and the development and implementation of a long-range strategy for adapting facility operations to address conservation of natural resources, such as birds and bats.

Other findings, as extensively discussed in the Findings Statement adopted by the Town, are reasonable and appropriate. The additional impact mitigation requirements we will impose will insure that impacts are minimized to the extent practicable, and that appropriate SEQRA findings may be made.

Public Convenience and Necessity

Procedural Matters

The concerns of commenters in opposition have generally been addressed outside the scope of this proceeding. The FEIS was determined to be complete, was accepted by the Town, and findings were issued. The general concerns expressed in the letters regarding wildlife and habitat impacts were addressed in the DEIS and FEIS, and mitigation measures are identified. Operational impacts such as turbine effects on birds and bats have been considered and will be monitored pursuant to additional post-construction analysis, monitoring and operational management to minimize significant adverse effects. Local permits address setbacks from property lines, roads and residences. The environmental matters discussed in the comments do not require additional consideration in this proceeding. They are not pertinent to the questions before us. Thus, no substantive objection warranting the holding of an evidentiary hearing on the request for a CPCN has been raised. The matter of setback requirements from utility bulk transmission facilities has been further considered in review by the Staff of the Department of Public Service (DPS), and appears not to be related to the comments received from the residents of the project vicinity.

Citing a list of general environmental concerns, Michael Peresan requests that the residents of the Town of Sheldon be granted “party status”. The request for party status does not address specific substantive matters related to the proposed construction or operation of electric plant, public safety or public interest other than the environmental

considerations that have been addressed in the SEQRA review conducted by the Town as Lead Agency, and the local approvals issued by the Town.

The hearing required by PSL §68 may be held before us on the application and any information filed by the parties, without oral testimony.³ We grant permission to intervene as a party “if the intervention is likely to contribute to the development of a complete record or is otherwise fair and in the public interest.”⁴ In deciding whether to grant a CPCN, we consider issues relating to public convenience and necessity. We will deny the request for Party Status because granting such request would not lead to a more complete record, nor be in the public interest.

Requirements of PSL §68

We are authorized to grant certification to an electric corporation pursuant to PSL §68, after due hearing and upon a determination that the construction of an electric plant is necessary and convenient for the public service. Our rules establish pertinent evidentiary requirements for a certificate application (16 NYCRR §21.3). The rules require a description of the plant to be constructed and of the manner in which the cost of such plant is to be financed, evidence that the proposed plant is in the public interest and is economically feasible, and proof that the applicant is able to finance the project and render adequate service.

The Company intends to provide electricity to the wholesale competitive market and have proposed to site the facilities to utilize a portion of the wind energy potential in New York State. The facilities are based on renewable resource technology, providing clean and renewable supplies of electricity to the wholesale energy market. Further, the proposed facilities will facilitate compliance with Executive Order 111 (issued by Governor George Pataki on June 30, 2001 and continued by Governor Eliot Spitzer on January 1, 2007), which requires all New York State agencies to purchase 10%

³ According to 16 NYCRR §21.10(b)(2), this is because no one filed an objection stating substantive reasons for opposing the Company’s motion for an expedited proceeding.

⁴ See 16 NYCRR §4.3(c)(1)

of their electricity from renewable energy sources by 2005 and 20% by 2010. The proposed facilities also address the objectives identified in the 2002 State Energy Plan and in Renewable Standard Proceeding, Case 03-E-0188.

These objectives include stimulating economic growth, increasing energy diversity, and promoting a cleaner, healthier environment. The proposed facilities will reportedly provide benefits that include positive economic impacts (such as increased revenues to municipalities and lease payments to landowners) and enhanced environmental quality (including potential reduction of emissions from fossil-fuel burning power plants).

In addition, the Company's parent is experienced and a financially viable developer of wind energy. Therefore, the facilities appears to be economically feasible and in the public interest.

The Company has committed to complying with the relevant design, construction and operational requirements of the National Electric Safety Code, other applicable engineering codes, standards and requirements, and the standards and policy requirements of NYSEG. The Company has proposed plans for addressing coordination with, and avoiding interference with, other utility providers in their facility design, construction and operations controls, and for responding to complaints and inquiries. The Company has generally developed appropriate emergency response measures and facility maintenance standards for the life of the electric plant.

The Project area contains existing utility infrastructure including interstate gas transmission pipelines, an emergency interconnection between pipelines, and delivery points to distribution facilities; and an electric bulk transmission facility, to which the Project will interconnect. As originally proposed, wind turbines would be located near the transmission pipelines and electric transmission line. DPS Staff requested the Company to address design, construction and operational considerations in defining turbine locations and interconnecting electric lines that would cross or parallel those underground high-pressure pipelines and overhead electric transmission lines, to minimize potential conflicts with the ongoing operation and maintenance of those existing facilities. The Company has documented planning and design coordination with

the interstate pipeline operators, and developed appropriate conditions and protocols for facility location and construction near those pipeline facilities. Due to potential for lightning strikes of the tall wind turbine facilities, DPS Staff has requested that the Company implement appropriate testing and maintenance protocols for the turbine tower grounding systems, to assure that grounding effectiveness is maintained throughout the life of the Project. The Company has indicated that it will adopt the recommended standards for facilities protection, and will undertake annual testing of the wind turbine grounding grids within 600 feet of the gas transmission facilities. We will adopt these facility protection and testing requirements as certificate conditions.

Several wind turbines were proposed to be located near the NYSEG 230 kV Stolle Road – Meyer transmission line. Upon further consideration of DPS Staff's concerns for separation distances between the nearly 400-foot tall turbine structures (including rotor blades at maximum tip height) and the bulk transmission lines, the Company has agreed to adopt increased setback criteria to minimize the potential risk of accidental damage to the transmission facilities due to tower or blade failure near those transmission lines. Turbines will be relocated or shortened to effectively implement a minimum setback distance of 1.5 times maximum turbine blade tip height from the center of turbine base to the nearest transmission facility component (conductor, pole, or related structural component). This setback distance corresponds with similar setbacks adopted by other project developers.⁵

Based on the Company's representations and commitments to adopt and enforce reasonable measures within the proposed area of operations, and the evidence presented in the petition as supplemented, we conclude that the Company will provide safe, reliable and adequate service. The conditions we will impose will help to ensure

⁵ Case 05-E-1634, Noble Clinton Windpark I, LLC., Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation. (issued October 19, 2006); and Case 07-E-0138, Canandaigua Power Partners, LLC., Order Granting Certificates of Public Convenience and Necessity, Providing for Lightened Regulation and Approving Financing, (issued August 16, 2007). In the future, we may, as conditions warrant require a minimum setback distance of 1.5 times maximum turbine blade tip height from the edge of the right-of-way of any electric transmission line designed to operate at 115 kV or more.

that the Companies' commitments are kept and enable us to make the required statutory finding.

The Company satisfied the requirements of PSL §68 by filing a copy of its Certificate of Formation as an exhibit to its petition. Moreover, responsible company officials have verified that the Company has secured all municipal consents necessary for the use of town property that are required by law.

A hearing having been held on January 16, 2008, we find, as required by PSL §68, that the construction and operation of the proposed Project is necessary and convenient for the public service.

Electric Regulation

The lightened regulatory regime that the Company requests is similar to that afforded to other comparably-situated Exempt Wholesale Generators participating in wholesale electric markets. Its petition is, therefore, granted, to the extent discussed below.

In interpreting the PSL, we have examined what reading best carries out the Legislature's intent and advances the public interest. In the Carr Street and AES Orders,⁶ it was concluded that new forms of electric service providers participating in wholesale markets would be lightly regulated. Under this realistic appraisal approach, PSL Article 1 applies to the Company because it meets the definition of an electric corporation under PSL §2(13) and is engaged in the manufacture of electricity under PSL §5(1)(b). The Company is, therefore, subject to provisions, such as PSL §§ 11, 19, 24, 25 and 26 that prevent producers of electricity from taking actions that are contrary to the public interest.⁷

⁶ Case 98-E-1670, Carr Street Generating Station, L.P., Order Providing For Lightened Regulation (issued April 23, 1999) (Carr Street Order); Case 99-E-0148, AES Eastern Energy, L.P., Order Providing For Lightened Regulation (issued April 23, 1999) (AES Order).

⁷ The PSL §18-a assessment is applied against gross retail revenues. As long as the Company remains exclusively a wholesaler, there are no retail revenues and no assessment is collected.

All of Article 2 is restricted by its terms to the provision of service to retail residential customers. It is inapplicable to wholesale generators like the Company. Certain provisions of Article 4 are also restricted to retail service.⁸ It was decided in the AES and Carr Street Orders that other provisions of Article 4 pertain to wholesale generators.⁹ Application of these provisions was deemed necessary to protect the public interest. The Article 4 provisions, however, were implemented in a fashion that limited their impact in a competitive market, with the extent of scrutiny afforded a particular transaction reduced to the level the public interest required. Moreover, wholesale generators were allowed to fulfill their PSL §66(6) obligation to file an annual report by duplicating the report they were required to file under federal law. This analysis adheres to the Company.

Regarding PSL §70, it was presumed in the AES Order that regulation would not "adhere to transfer of ownership interests in entities upstream from the parents of a New York competitive electric generation subsidiary, unless there is a potential for harm to the interests of captive utility ratepayers sufficient to override the presumption."¹⁰ Wholesale generators were also advised that the potential for the exercise of market power arising out of an upstream transfer would be sufficient to defeat the presumption and trigger PSL §70 review.¹¹ The Company may avail itself of this protection.

⁸ See, e.g., PSL §66(12), regarding the filing of tariffs, required at our option; §66(21), regarding storm plans submitted by retail service electric corporations; §67, regarding inspection of meters; §72, regarding hearings and rate proceedings; §75, regarding excessive charges; and §76, regarding rates charged religious bodies and others.

⁹ PSL §68 provides for certification in connection with the construction of electric plant (unless such plant is reviewed pursuant to PSL Article VII) or with electricity sales made via direct interconnection with retail customers. PSL §69, §69-a and §70 provide for the review of security issuances, reorganizations, and transfers of securities, works or systems.

¹⁰ AES Order, p. 7.

¹¹ In this context, under PSL §66(9) and (10), we may require access to records sufficient to ascertain whether the presumption remains valid.

Turning to PSL Article 6, several of its provisions that adhere to the rendition of retail service do not pertain to the Company because it is engaged solely in the generation of electricity for sale into the wholesale market.¹² Application of PSL §115, relating to requirements for the competitive bidding of utility purchases, is discretionary and will not be imposed on wholesale generators. In contrast, PSL §119-b, relating to the protection of underground facilities from damage by excavators, adheres to all persons, including wholesale generators.

Most of the remaining provisions of Article 6 need not be imposed generally on wholesale generators.¹³ These provisions were intended to prevent financial manipulation or unwise financial decisions that could adversely impact rates charged by monopoly providers. So long as the wholesale generation market is effectively competitive, wholesale generators cannot raise prices even if their costs rise due to poor management. Moreover, imposing these requirements could interfere with wholesale generators' plans for structuring the financing and ownership of their facilities. This could discourage entry into the wholesale market, or overly constrain its fluid operation, adversely affecting its operation to the detriment of the public interest.

As discussed in the Carr Street Order, market power issues may be addressed under PSL §110(1) and (2), which afford us jurisdiction over affiliated interests. The Company, however, reports that it does not plan to affiliate with a power marketer, foreclosing that revenue to the exercise of market power. Consequently, we will not impose the requirements of Article 6 on the Company except for §119-b; we will conditionally impose §110(1) and (2) to the extent necessary. The Company is reminded,

¹² See, e.g., PSL §112, regarding enforcement of rate orders; §113, regarding reparations and refunds; §114, regarding temporary rates; §114-a, regarding exclusion of lobbying costs from rates; §116, regarding discontinuance of water service; §117, regarding consumer deposits; §118, regarding payment to an authorized agency; §119-a, regarding use of utility poles and conduits; and, §119-c, regarding recognition of tax reductions in rates.

¹³ These requirements include approval of: loans under §106; the use of utility revenues for non-utility purposes under §107; corporate merger and dissolution certificates under §108; contracts between affiliated interests under §110(3); and electric, gas, and water purchase contracts under §110(4).

however, that it remains subject to the PSL with respect to matters such as enforcement, investigation, safety, reliability, and system improvement, and the other requirements of PSL Articles 1 and 4, to the extent discussed above and in previous orders.¹⁴ Included among these requirements are the obligations to conduct tests for stray voltage on all publicly accessible electric facilities,¹⁵ to give notice of generation unit retirements,¹⁶ and to report personal injury accidents pursuant to 16 NYCRR Part 125.

The Commission orders:

1. The motion for an expedited proceeding on the non-contested application of Sheldon Energy LLC is granted.
2. The request for Party Status of Michael Peresan is denied.
3. A Certificate of Public Convenience and Necessity is granted to Sheldon Energy LLC (the Company), authorizing the Company to construct and operate the High Sheldon Wind Farm, the electric plant described in its petition (as supplemented) and in this Order, subject to the conditions set forth below.
4. The Company shall obtain all necessary federal, state, and local permits and approvals, and shall implement appropriate mitigation measures defined in such permits or approvals.
5. The Company shall file with the Secretary to the Commission, prior to construction of the certificated project, final survey drawings or site plans as submitted to the Town of Sheldon; all further plan revisions shall be filed in a timely manner.
6. Prior to construction of the substation and transmission interconnection, not including minor activities required for testing and development of final engineering and design information, the Company shall provide to the Staff of the Department of Public

¹⁴ See, e.g., Case 05-E-1095, TransCanada Power (Castleton) LLC, Declaratory Ruling on Transfer of Ownership Interests and Order Providing for Lightened Regulation (issued January 26, 2006).

¹⁵ Case 04-M-0159, Safety of Electric Transmission and Distribution Systems, Order Instituting Safety Standards (issued January 5, 2005) and Order on Petitions for Rehearing and Waiver (issued July 21, 2005).

¹⁶ Case 05-E-0889, Generation Unit Retirement Policies, Order Adopting Notice Requirements for Generation Unit Retirements (issued December 20, 2005).

Service (DPS): final design plans and profile drawings of the substation and the transmission interconnection; and proof of acceptance of the design by New York State Electric & Gas Corporation (NYSEG).

7. The authorized electric plant shall be subject to inspection by authorized representatives of the DPS pursuant to §66(8) of the Public Service Law.

8. The Company shall provide details of the final historic mitigation program plan and details, and copy of any Memorandum of Agreement regarding finalization of the §106 National Historic Preservation Act review as implemented by the State Historic Preservation Officer.

9a. The Company shall incorporate, and implement as appropriate, the standards and measures for engineering design, construction, maintenance and operation of its authorized electric plant, including features for facility security and public safety, utility system protection, plans for quality assurance and control measures for facility design and construction, utility notification and coordination plans for work in close proximity to other utility transmission and distribution facilities, vegetation and facility maintenance standards and practices, emergency response plans for construction and operational phases, and complaint resolution measures, as presented in its Petition (as supplemented), its Environmental Impact Statement and this Order.

9b.) the Company shall adopt the standards for gas transmission facilities protection, as indicated in the January 7, 2008 supplement to the petition; the Company shall present to Staff and the gas transmission line owner the calculations of anticipated induced voltage on natural gas transmission pipelines located within 100 feet of, and parallel to for a distance exceeding 200 feet, its 34.5 kV electric circuits;

9c.) the Company shall design, install and maintain ground grids at the base of each turbine to be in full conformance with IEEE 80 to provide an impedance less than 25 ohms; furthermore, the company shall undertake annual testing of the wind turbine grounding grids within 600 feet of the gas transmission facilities, and report any results of that testing with the respective gas transmission company and to staff of the Safety and the Bulk Transmission Systems sections;

9d.) to minimize risk to electric bulk transmission system, the Company shall adopt a setback distance from the NYSEG electric transmission facility to which the authorized electric plant is connected, equal to not less than 1.5 times turbine tip height at maximum extension, measured from the center of the turbine tower to the nearest existing electric transmission line structure component, whether tower or conductor; the Company shall revise plans for turbines B1 and J2 to reflect this setback criterion, and submit details indicating conformance of facility design to this setback requirement.

10. The Company shall file with the Secretary to the Commission, within three days after commencement of commercial operation of the electric plant, an original and three copies of written notice thereof.

11. The Company shall design, construct and operate electric plant including electric gathering lines and transmission facilities in accordance with the Agricultural Mitigation Guidelines recommended by the New York State Department of Agriculture and Markets.

12. The Company shall continue to consult with the New York State Department of Environmental Conservation (DEC) and the U.S. Fish and Wildlife Service (FWS) in the preparation of a work plan for post-construction monitoring and mitigation of avian and bat impacts; a draft work plan for first season operations monitoring shall be submitted to DPS Staff, DEC and FWS by November 15, 2008; a revised plan for additional post-construction monitoring approved by DEC and FWS shall be provided to DPS Staff by April 15, 2009; a final report shall be presented upon conclusion of the post-construction monitoring studies; the final report shall include an adaptive management strategy, including identification of a commitment to employ necessary mitigation measures in the event that post-construction monitoring studies identify significant adverse impacts to populations of resident or migratory birds or bats from operation of the wind energy facilities; any disputes or unresolved issues regarding the studies or management plans shall be reported to the Commission for resolution.

13. The Company shall design, engineer, and construct facilities in support of the authorized electric plant as provided in the System Reliability Impact Study (SRIS) approved by the New York Independent System Operator (NYISO), the Transmission

Planning and Advisory Subcommittee (TPAS), the NYISO Operating Committee, and the NYISO Class Year 2007 Annual Transmission Reliability Assessment Study, and in accordance with the applicable and published planning and design standards and best engineering practices of NYISO, NYSEG, the New York State Reliability Council (NYSRC), Northeast Power Coordinating Council (NPCC), North American Electric Reliability Council (NERC) and successor organizations, depending upon where the facilities are to be built and which standards and practices are applicable. Specific requirements shall be those required by the NYISO Operating Committee and TPAS in the approved SRIS and by the Interconnection Agreement (IA) and the facilities agreement with NYSEG.

14. The Company shall work with NYSEG, and any successor Transmission Owner (as defined in the NYISO Agreement), to ensure that, with the addition of the electric plant (as defined in the IA between the Company and NYSEG), the system will have power system relay protection and appropriate communication capabilities to ensure that operation of the NYSEG Transmission System is adequate under NPCC Bulk Power System Protection Criteria, and meets the protection requirements at all times of the NERC, NPCC, NYSRC, NYISO, and NYSEG, and successor Transmission Owner (as defined in the NYISO Agreement). The Company shall ensure compliance with applicable NPCC criteria and shall be responsible for the costs to verify that the relay protection system is in compliance with applicable NPCC, NYISO, NYSRC and NYSEG criteria.

15. The Company shall operate the electric plant in accordance with the IA, approved tariffs and applicable rules and protocols of NYSEG, NYISO, NYSRC, NPCC, NERC and successor organizations. The Company may seek subsequent review of any specific operational orders at the NYISO, the Commission, the Federal Energy Regulatory Commission, or in any other appropriate forum.

16. The Company shall be in full compliance with the applicable reliability criteria of NYSEG, NYISO, NPCC, NYSRC, NERC and successors. If it fails to meet the reliability criteria at any time, The Company shall notify the NYISO immediately, in

accordance with NYISO requirements, and shall simultaneously provide the Commission and NYSEG with a copy of the NYISO notice.

17. The Company shall file a copy of the following documents with the Secretary to the Commission:

- (a) all facilities agreements with NYSEG, and successor Transmission Owner throughout the life of the plant (as defined in the NYISO Agreement);
- (b) the SRIS applicable to each approved by the NYISO Operating Committee;
- (c) any documents produced as a result of the updating of requirements by the NYSRC;
- (d) the Relay Coordination Study, which shall be filed not later than four months prior to the projected date for commencement of commercial operation of the facilities; and a copy of manufacturers' "machine characteristics" of the equipment installed (including test and design data);
- (e) a copy of the facilities design studies for the Electric Plants, including all updates (throughout the life of the plant);
- (f) a copy of the IA and all updates or revisions (throughout the life of the plant); and
- (g) if any equipment or control system with different characteristics is to be changed out the Company shall provide that information before such changes are made (throughout the life of the plant);

18. The Company shall obey unit commitment and dispatch instructions issued by the NYISO, or its successor, in order to maintain the reliability of the transmission system. In the event that the NYISO System Operator encounters communication difficulties, The Company shall obey dispatch instructions issued by the NYSEG Control

Center, or that its successor, in order to maintain the reliability of the transmission system.

- (a) After commencement of construction of the authorized Electric Plant, The Company shall provide the DPS Staff and NYSEG with a monthly report on the progress of construction and an update of the construction schedule. In the event the Commission determines that construction is not proceeding at a pace that is consistent with Good Utility Practice, and that a modification, revocation, or suspension of the Certificates may therefore be warranted, the Commission may issue a show cause order requiring the Company to explain why construction is behind schedule and to describe such measures as are being taken to get back on schedule. The Order to Show Cause will set forth the alleged facts that appear to warrant the intended action. The Company shall have thirty days after the issuance of such Order to respond and other parties may also file comments within such period. Thereafter, if the Commission is still considering action with respect to the Certificate, a hearing will be held prior to issuance of any final order of the Commission to amend, revoke or suspend the Certificate. It shall be a defense in any proceeding initiated pursuant to this condition if the delay of concern to the Commission:
 - 1. arises in material part from actions or circumstances beyond the reasonable control of the Company (including the actions of third parties);
 - 2. is not in material part caused by the fault of the Company; or
 - 3. is not inconsistent with a schedule that constitutes Good Utility Practice.
- (b) The Company shall file with the Secretary to the Commission, no more than four months after the commencement of construction, a detailed progress report. Should that report indicate that construction will not be

completed within twelve months, The Company shall include in the report an explanation of the circumstances contributing to the delay and a demonstration showing why construction should be permitted to proceed. In these circumstances, an order to show cause will not be issued by the Commission, but a hearing will be held before the Commission takes any action to amend, revoke or suspend the Certificate.

- (c) For purposes of this condition, Good Utility Practice shall mean any of the applicable acts, practices or methods engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability and safety. Good Utility Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region in which The Company are located. Good Utility Practice shall include, but not be limited to, NERC criteria, rules, guidelines and standards, NPCC criteria, rules, guidelines and standards, New York State Reliability Council criteria, rules, guidelines and standards, and NYISO criteria, rules, guidelines and standards, where applicable, as they may be amended from time to time (including the rules, guidelines and criteria of any successor organization to the foregoing entities). When applied to the Company, the term Good

Utility Practice shall also include standards applicable to an independent power producer connecting to the distribution or transmission facilities or system of a utility.

- (d) Except for periods during which the authorized facilities are unable to safely and reliably convey electrical energy to the New York transmission system (e.g., because of problems with the authorized facilities themselves or upstream electrical equipment) The Company's electric plant shall be exclusively connected to the New York transmission system over the facilities authorized herein.

19. The Company shall work with NYSEG system planning and system protection engineers to discuss the characteristics of the transmission system before purchasing any system protection and control equipment related to the electrical interconnection of the Project to the NYSEG transmission system. This discussion is designed to ensure that the equipment purchased will be able to withstand most system abnormalities. The technical considerations of interconnecting the electric plant to the NYSEG 230 kV transmission facility shall be documented by the Company and provided to DPS Staff and NYSEG prior to the installation of transmission equipment. Updates to the technical information shall be furnished as available (throughout the life of the plant).

20. The Company shall work with NYSEG engineers and safety personnel on testing and energizing equipment in the authorized substations. A testing protocol shall be developed and provided to NYSEG for review and acceptance. A copy shall be provided to DPS Staff following NYSEG approval. The Company shall make a good faith effort to notify DPS Staff of meetings related to the electrical interconnection of the Project to the NYSEG transmission system and provide the opportunity for DPS Staff to attend those meetings. A copy of the testing design practical will be provided to staff of the Bulk Transmission Section.

21. The Company shall call the DPS Bulk Transmission Section within six hours to report any transmission related incident that affects the operation of the Electric Plant.

The Company shall submit a report on any such incident within seven days to the DPS Bulk Transmission Staff and NYSEG. The report shall contain, when available, copies of applicable drawings, descriptions of the equipment involved, a description of the incident and a discussion of how future occurrences will be prevented. The Company shall work cooperatively with NYSEG, NYISO and the NPCC to prevent any future occurrences.

22. The Company shall make modifications to its Interconnection Facility, if it is found by the NYISO or NYSEG to cause reliability problems to the New York State Transmission System. If NYSEG or the NYISO bring concerns to the Commission, The Company shall be obligated to address those concerns.

23. If, subsequent to construction of the authorized electric plant, no electric power is transferred over such plant for a period of more than a year, the Commission may issue an Order to Show Cause requiring The Company to explain why power has not been transferred for such period, and specifying what, if any, action the Commission may be considering with respect to the Certificate and the basis for such action. The Company shall have thirty days after issuance of such Order to respond, and other parties may file comments within such period. Thereafter, if the Commission is still considering action with respect to the Certificate, a hearing will be held prior to issuance of any final order of the Commission to amend, revoke or suspend the Certificate.

24. In the event that an equipment failure of the authorized Electric Plant causes a significant reduction in the capability of such Plant to deliver power, the Company shall promptly provide to DPS Staff and NYSEG copies of all notices, filings, and other substantive written communications with the NYISO as to such reduction, any plans for making repairs to remedy the reduction, and the schedule for any such repairs. The Company shall report monthly to the DPS Staff and NYSEG on the progress of any repairs. If such equipment failure is not completely repaired within nine months of its occurrence, the Company shall provide a detailed report to the Secretary to the Commission, within nine months and two weeks after the equipment failure, setting forth the progress on the repairs and indicating whether the repairs will be completed within three months; if the repairs will not be completed within three months, the Company shall explain the circumstances contributing to the delay and demonstrate why the repairs

should continue to be pursued. A hearing will be held before the Commission takes any action to amend, revoke or suspend the Certificate(s).

25. Within 60 days of the issuance of this Order, the Company shall file with the Secretary of the Commission Operation and Maintenance Plan(s) for the Electric Plant.

26. The Company and its affiliates shall comply with the Public Service Law in conformance with the requirements set forth in the body of this Order.

27. This proceeding is continued pending compliance with ordering clauses 5, 10, 17(d), 18(b), and 25; following compliance, it will be closed.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 07-E-0213 – Petition of Sheldon Energy LLC for an Original Certificate of Public Convenience and Necessity on Regulatory Regime Pursuant to Public Service Law Section 68.

FINDINGS STATEMENT

This statement was prepared in accordance with Article 8 of the Environmental Conservation Law. The construction of a wind generation electric plant in the Town of Sheldon, Wyoming County is a Type I action. The Town acted as lead agency and the Public Service Commission (the Commission) is an involved agency. The address of the lead agency is Town of Sheldon Planning Board, 1380 Centerline Road, Strykersville, New York 14145; the address of the Commission is Jaclyn A. Brilling, Secretary, New York State Public Service Commission, 3 Empire State Plaza, Albany, NY 12223-1350. Questions may be directed to Andrew Davis at (518) 486-2853, or to the Commission at the address above.

Description of Project

The project will consist of 75 wind turbines, 20 miles of access roads, overhead and underground electrical lines, a 2-acre interconnection substation, a construction staging area, and a centrally located operations and maintenance facility. The wind turbines will range in height up to 397 feet, with a rotor diameter of approximately 253 to 271 feet. The lowest point of the blade will be 127 feet above ground.

The Draft Environmental Impact Statement (DEIS) and Final Environmental Impact Statement (FEIS) analyzed potential environmental impacts on land use and zoning, visual resources, socioeconomic issues, traffic and transportation, air quality, noise, soils, geology, terrestrial and aquatic ecology including threatened and endangered species, effects on communications facilities, storm water management, and impacts of construction; and they contained general and specific mitigation measures. The Town determined, based upon field investigations and review of the DEIS and the FEIS, that the proposed action with the mitigation measures incorporated in the FEIS

minimizes or avoids significant environmental impact to the maximum extent possible. The mitigation measures discussed in the FEIS include: compliance with conditions and any mitigation measures required by any federal, state, and local permits and approvals; implementation of appropriate mitigation measures defined in such permits or approvals; facility phasing and design that avoid concentrating construction-related impacts in any one area; facility layout and location that avoid areas with concentrations of residents or sensitive environmental features; minimum setbacks from residences to limit noise, visual and public safety impacts; and employment of environmental monitors to assure compliance with all environmental commitments and permit requirements. The Town determined that a large-scale wind power-generating project will result in significant environmental and economic benefits to the area.

As requested by Department of Public Service (DPS) Staff, the Company provided additional information regarding facility engineering, construction and operation. DPS Staff was particularly concerned with the details of turbine locations and facilities setbacks from existing gas transmission pipelines and high-voltage electric transmission lines.

Cultural resources impacts have been reviewed pursuant to §106 of the National Historic Preservation Act. On April 19, 2007, the Office of Parks, Recreation and Historic Preservation (OPRHP) indicated that it had no concerns regarding impacts to archeological resources listed or eligible for listing on the State or National Registers of Historic Places. OPRHP stated that the project would have an "adverse effect" on cultural resources (architectural and cultural heritage) within the area of potential effect. OPRHP indicated that consultation regarding potential mitigation to offset impacts should be continued. OPRHP explained that, due to the significant scale of wind turbine structures, visual contrasts are not readily minimized and historic resource settings may be adversely affected. Consultation with OPRHP regarding mitigation measures to minimize adverse effects resulted in development of an offset mitigation strategy and plan. Thus cultural resources impacts have been addressed and no further action pursuant to Parks, Recreation and Historic Preservation Act §14.09 are necessary.

In addition to the historic resource impacts discussed above, impacts on avian and bat species are anticipated due to facility operations. The FEIS identifies potential mortality estimates based on analysis of site conditions and operating experience at other wind-powered electric generation projects. The FEIS indicates that post-construction mortality reporting and an adaptive management strategy to minimize significant impacts should be developed with additional input from the U.S. Fish and Wildlife Service and the New York State Department of Environmental Conservation. This approach is appropriate to the mitigation of adverse wildlife effects, provided that the adaptive management strategy is required to be implemented in facility operations. Critical periods of potential highest risk, land cover management opportunities, or similar adaptive management strategies, may be identified by monitoring mortalities and operations. Results will indicate impact avoidance, or minimization strategies, appropriate to the facility sites.

Other findings pursuant to the State Environmental Quality Review Act (SEQRA), as extensively discussed in the Findings Statements adopted by the Town, are reasonable and appropriate. Those findings consider the relevant environmental impacts, facts and conclusions as discussed in the FEIS. The significant benefits identified in the FEIS will accrue to the local community through increased employment, payment of taxes, Payments In Lieu of Tax, and Host Community Agreement incentive payments. The FEIS identified a long-term beneficial impact on air quality due to electricity generation without any emissions to atmosphere, and potential displacement of emissions from fossil-fuel based generation. Initiatives of New York State are served by the increased availability of renewable electricity to be provided by the wind facilities.

The potential benefits identified in the FEIS outweigh the potential adverse effects that will result from construction and operation of the proposed wind generation facilities. The mitigation measures proposed are reasonable responses to identified impacts, and will avoid or minimize the identified adverse effects to the extent practicable. Offset measures to the identified adverse effects on historic resources will provide for the establishment or enhancement of historic preservation programs in the project vicinity, and will advance the understanding, appreciation and preservation of

historic resources and historic values in the community. Implementation of the adaptive management strategy discussed in the FEIS will minimize adverse impacts on wildlife species.

The Commission certifies that the requirements of SEQRA have been met, based on the procedural measures administered by the Lead Agency, the input of involved agencies, and the substantive mitigation of adverse effects based on facility design and the requirements of the agencies findings, the various permits to be issued, and the requirements of the Certificates of Public Convenience and Necessity. The Commission also certifies that, consistent with social, economic and other essential considerations from among the reasonable alternatives available, the actions are one that avoid or minimize adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable because of the incorporation of conditions requiring appropriate mitigation measures in the Certificates of Public Convenience and Necessity.

JACLYN A. BRILLING
Secretary